

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20054**

Re:

COMPETITIVE PROVISION OF 911)	
SERVICE PRESENTED BY)	WC Docket No. 08-35
CONSOLIDATED ARBITRATION)	WC Docket No. 08-185
PROCEEDINGS)	

COMMENTS OF THE

INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

To the Commission:

I. INTRODUCTION

The Independent Telephone & Telecommunications Alliance (ITTA) hereby submits these comments in the above-captioned proceeding. ITTA is an alliance of mid-size telephone companies that collectively serve approximately 30 million access lines in 44 states, offering subscribers a broad range of high-quality wireline and wireless voice, data, Internet, and video services. The Commission seeks comment on a policy issue that has been identified in the context of consolidated interconnection proceedings between Intrado Communications of Virginia, Inc. (Intrado) and Central Telephone Company of Virginia and United Telephone – Southeast, Inc. (collectively, Embarq n/k/a CenturyLink) and Verizon South, Inc. and Verizon Virginia, Inc. (collectively, Verizon).¹

¹ “Comment Sought on Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings,” Public Notice DA 09-1262, WC Docket Nos. 08-35, 08-185 (Jun. 4, 2009) (Public Notice).

Although participation in these arbitration proceedings would ordinarily be limited to the parties to the arbitration request, the Commission waived, on its own motion, Rule 51.807(g) and requested comments on a discrete issue. That issue, specifically, is the competitive provision of 911 voice services, and the possible impact that such competitive provision of those services might have on Public Safety Answering Points (PSAPs), competitive carriers, Commercial Mobile Radio Service (CMRS) providers, and others. The Commission explains, “[W]e believe that the complex policy issues implicated by the competitive provision of 911 services raised by this proceeding are best resolved with maximum participation by all interested parties.”²

ITTA supports the general proposition that the Commission obtain public input and assemble an informed record on the competitive provision of 911 voice services. Nevertheless, the Commission’s effort within the context of the instant proceedings appears to skip past a critical threshold issue that is, in fact, at the heart of the matter. Specifically, the instant arbitration proceedings must first address the question of whether Intrado is entitled to interconnection pursuant to Section 251(c)(2). Pursuant to the Communications Act of 1934, as amended (the Act), the rights of interconnection are limited to telecommunications providers which, like incumbent local exchange carriers (ILECs), are subject to rights and obligations pursuant to the Act. Accordingly, although the Commission should address the question of potential impacts of competitive 911 service, that matter is best addressed in a proceeding dedicated to that issue. By contrast,

² Public Notice at 3.

the instant proceedings should address squarely the issue of whether Intrado is a telecommunications provider for purposes of Section 251(c)(2) interconnection.

II. DISCUSSION

The instant proceedings arise out of consolidated arbitration proceedings, both of which were deferred to the Commission by the Virginia State Corporation Commission (VSCC). Notably, the VSCC identified what it characterized as a “threshold issue,” and stated its opinion that, “we believe the FCC is the more appropriate agency to determine whether Intrado is entitled to interconnection pursuant to Section 251(c) of the Telecommunications Act.”³ And, yet, the Public Notice issued by the Commission bypasses that issue and instead addresses the ancillary, albeit important, policy issue of potential impacts of competitive 911 services. While that issue should receive attention, the instant arbitration proceeding is not the proper forum.

The matter of whether Intrado is, in fact, entitled to Section 251(c)(2) interconnection is a legal question separate and apart from policy considerations that may attend competitive provision of 911 services. The threshold qualification for any competitive 911 provider, or any other entity, must be addressed within the confines of the relevant statute. The interconnection rights of Section 251(c)(2) revolve around whether the requesting entity provides “telephone exchange service” pursuant to the Act. The Act defines “telephone exchange service” as follows:

TELEPHONE EXCHANGE SERVICE – The term “telephone exchange service” means (A) service within a telephone exchange, or within a

³ *Petition of Intrado Communications of Virginia, Inc., for Arbitration to Establish an Interconnection Agreement with Central Telephone Company of Virginia d/b/a Embarq and United Telephone – Southeast, Inc. d/b/a Embarq, Under Section 252(b) of the Telecommunications Act of 1996: Order of Dismissal*, Virginia State Corporation Commission, Case No. PUC-2007-00112, at 2-3, n.2 (Feb. 14, 2008).

connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate telecommunications service.⁴

The definition is disjunctive; therefore, the service in question must satisfy either prong (A) or (B) of the above-quoted definition. Within each prong, however, are a series of qualifications, each of which must be met before the service in question can be accorded status as a telephone exchange service that in turn renders its provider capable of achieving Section 251(c)(2) interconnection.

Regarding prong (A), the service must be,

- (i) service within a telephone exchange, or
 - (ii) within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange,
- and,
- either of which must be covered by the exchange service charge.

Alternatively, under prong (B), the service must be,

- (i) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof), and
- (ii) by which a subscriber can originate and terminate telecommunications service.

Failure to meet either prong (A) or (B) preempts the potential interconnector's rights to Section 251(c)(2) interconnection.

⁴ 47 USC § 153(47).

In the instant proceeding, the Commission must settle the question of whether the service offered by Intrado meets the requirements of the statute summarized above. That issue is governed by existing law and should be addressed within the adjudicatory process of the arbitration proceedings that have been deferred to the Commission. More general questions regarding competitive provision of 911 services, by contrast, are better suited to a general rulemaking or other proceeding. Many issues are implicated by the compact questions presented by the Public Notice. For example, would competitive provision of 911 services be affected by state or local funding mechanisms, or other local-level regulations? What type of technical questions are implicated as providers or PSAPs might be compelled to communicate with varying providers across various grades of technology? And, at the core of any questions regarding the competitive issues is whether, or how, end-user customers that pay the 911 fees might be affected? Competition is fundamentally about improving customer choice, lowering prices, and increasing value for the services purchased. In a proceeding addressing the competitive provision of 911, the Commission must determine not only whether the competitive 911 provider's service offering would improve customer choice or bring additional value, but also critical quality control issues that must attend the provision of 911 services. These questions cannot be adequately addressed without an understanding of how a particular provider's platform would affect PSAP operator's equipment needs, reliability of routing, and changes in transport costs, all of which will ultimately need to be recovered through 911 fees assessed to the customers. The breadth of issues to be addressed is beyond the

borders of arbitration proceedings that have, essentially, landed at the Commission solely by default of a state commission. Accordingly, the Commission should first settle the legal questions presented by the arbitration before moving on to the policy questions that may, or may not, subsequently arise.

III. CONCLUSION

The Commission has a robust record of ensuring public safety through rulemaking proceedings that have resulted in strong standards for telecommunications and other service providers. Undoubtedly, these efforts, facilitated by industry involvement and government interest, have and continue to enhance public safety throughout the Nation. ITTA applauds the Commission's interest in ensuring that the quality of 911 service throughout the Nation is not affected adversely as competitive providers may arise. That inquiry, however, is better-suited to a proceeding that provides opportunity for comprehensive consideration of all technical, legal, customer impact, financial costs, and jurisdictional issues that may arise.

Respectfully submitted,

s/ Joshua Seidemann

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